

07 CV 11125

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BAOTONG SHIPPING LTD.,

Plaintiff,

- against -

MODERN WOOD INVESTMENT LTD.,

Defendant.



VERIFIED COMPLAINT

Plaintiff, BAOTONG SHIPPING LTD., (hereafter referred to as "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, L.L.C., as and for its Verified Complaint against the Defendant, MODERN WOOD INVESTMENT LTD. ("Defendant"), alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. This claim involves the breach of maritime contract of charter. This matter also arises under the Court's federal question jurisdiction within the meaning of 28 United States § 1331 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (9 U.S.C. § 201 *et seq.*) and/or the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*).

2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law and was at all material times the owner of the motor vessel "CHUN JIANG" (hereinafter the "Vessel").

3. Upon information and belief, Defendant was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law and was at all material times the Charterer of the Vessel.

4. Pursuant to a charter party dated August 18, 2007, as evidenced by a fixture note of the same date, Plaintiff chartered the Vessel to Defendant for a trip from Phu My Port, Vietnam to Yang Pu Port, China for the purpose of carriage of wood chips in bulk. A copy of the fixture note covering the voyage and bill of lading covering the carriage of the cargo are respectively annexed hereto as Exhibits 1 and 2.

5. Plaintiff delivered the Vessel into the service of the Defendant and fully performed all duties and obligations under the charter party.

6. A dispute has arisen between the parties regarding Defendant's failure to pay demurrage¹ due and owing.

7. As a result of Defendant's breach of the charter party due to its failure to pay demurrage, Plaintiff has sustained damages in the total principal amount of \$45,000 exclusive of interest, arbitration costs and attorneys fees, as best as may be presented estimated.

8. Despite due and repeated demand, Defendant has failed to pay the sums due and owing to Plaintiff under the charter party. Attached hereto as Exhibit 3 is a copy of Plaintiff's laytime calculation for payment of outstanding demurrage by Defendant.

9. Pursuant to the charter party, disputes between the parties are to be submitted to arbitration in Hong Kong with English law to apply. Plaintiff has commenced arbitration of its claim against Defendant by appointment of its arbitrator. See copy of Plaintiff's notice of appointment attached hereto as Exhibit 4.

10. This action is brought in order to obtain jurisdiction over Defendant and also to obtain security for Plaintiff's claims and in aid of arbitration proceedings.

11. Interest, costs and attorneys' fees are routinely awarded to the prevailing party within Hong Kong arbitration conducted pursuant to English law. As best as can now be estimated, Plaintiff expects to recover the following amounts at arbitration as the prevailing party:

A.	Principal claim – unpaid demurrage	\$45,000;
B.	Interest on claim - 3 years at 7.5% per annum compounded quarterly	\$11,237.24;
C.	Estimated arbitration costs:	\$15,000; and
D.	Estimated attorneys' fees and expenses:	\$25,000.00.
Total:		\$96,237.24.

12. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant.

13. The Plaintiff seeks an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the

¹ Demurrage is a liquidated damage for delay set forth in the charter party that requires a vessel charterer to pay the vessel owner when the vessel is prevented from the loading or discharging of cargo within the stipulated laytime (i.e., the maximum time permitted in the charter party for cargo operations)

Defendant held by any garnishees within the District for the purpose of obtaining personal jurisdiction over the Defendant and to secure the Plaintiff's claim as described above.

WHEREFORE, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint failing which default judgment be entered against it;

B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of \$96,237.24 belonging to, due or being transferred to, from, or for the benefit of the Defendant, including but not limited to such property as may be held, received or transferred in Defendant's name or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishees to be named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

C. That the Court retain jurisdiction to compel the Defendant to arbitrate in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq.*;

D. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

E. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court;

F. That this Court award Plaintiff the attorneys' fees and costs incurred in this action; and

G. That the Plaintiff has such other, further and different relief as the Court may deem just and proper.

Dated: New York, NY
December 10, 2007

The Plaintiff,
BAOTONG SHIPPING LTD.

By: 
Kevin J. Lennon
Nancy R. Peterson

LENNON, MURPHY & LENNON, LLC
420 Lexington Avenue, Suite 300
New York, NY 10170
(212) 490-6050 - phone
(212) 490-6070 - facsimile
kjl@lenmur.com
nrp@lenmur.com

ATTORNEY'S VERIFICATION

State of Connecticut)
) ss.: Town of Southport
County of Fairfield)

1. My name is Kevin J. Lennon
2. I am over 18 years of age, of sound mind, capable of making this
Verification, and fully competent to testify to all matters stated herein.
3. I am a partner in the firm of Lennon, Murphy & Lennon, LLC attorneys for the
Plaintiff.
4. I have read the foregoing Verified Complaint and know the contents
thereof and believe the same to be true and accurate to the best of my knowledge, information
and belief.
5. The reason why this Verification is being made by the deponent and not
by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now
within this District.
6. The source of my knowledge and the grounds for my belief are the
statements made, and the documents and information received from, the Plaintiff and agents
and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated: Southport, CT
 December 10, 2007

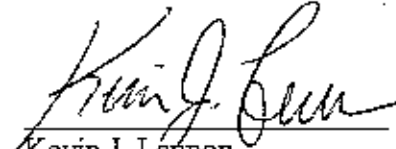

Kevin J. Lennon

EXHIBIT 1

FM: Wang Jing

Pages 13.

FIXTURE NOTE

IT IS ON THIS DATE 18TH AUG, 2007 MUTUALLY AGREED BETWEEN THE CHARTER(HHEREAFTER CALLED THE "CHTR") AND THE OWNER (HEREAFTER CALLED THE "OWR") UNDERSIGNED THIS FIXTURE NOTE UNDER FOLLOWING TERMS AND CONDITIONS.

OWR: HAOTONG SHIPPING LIMITED

CHTR: MODERN WOOD INVESTMENT LTD.

13/F RICHMAKE COMM. BLDG., 194-200 QUEEN'S ROAD CENTRAL H.K.

PERFORMING VESSEL:

MV. CHUN JIANG

PAN FLAG, DWT 17456MT, BUILT 1986, CLASS: CCS

LOA/BM/DEPTH: 145.5M/21.0M/13.0M,

DRAFT: 10.13M GRT/NRT: 11025MT/6792MT, GRAIN 22581.15CBM, 4HA/4HO

TWEEN DECK, CARGO GEAR, DERRICKS 4 X 15MTS, ADA, WOG

- 1) CARGO: ACACIA WOODCHIPS OR EUCALYPTUS WOODCHIPS.....
- 2) LD PORT: 1SBP PHU MY PORT, VIETNAM/1SBP YANGPU, CHINA
- 3) LYCN: 20TH-28TH AUG. 2007
- 4) LOAD/DISCH RATE: TTL 6 CALENDAR DAYS SHEKUU
- 5) NOR TO BE TENDERED WHEN VSL ARRIVE AT P/S OF LD PORT, LAYTIME TO BE COMMENCED AT 1300LT IF NOR TENDERED BEFORE AND INCLUDE 1200LT, AND TO BE COMMENCED AT 0600LT NEXT DAY IF NOR TENDERED AFTER 1200LT, UNLESS SOONER COMMENCED (UATUTC)
- 6) FRT RATE: LUMP SUM TTL USD 138000 MOST BSS 1/1
- 7) FRT PAYMENT: 100% OF OFT PAYABLE TO OWR'S NOMINATED BANK ACCT W/ THREE (03) BANKING DAYS ACOL, BUT ALWAYS



BBB/LT/TE/UPON FULL FRT RECEIVED,FRT DEEMED EARNED
UPON COMPLETION OF LOADING, DISCOUNT-LESS AND
NON-RETURNABLE WHETHER SHIP AND/OR CARGO LOST OR NOT
LOST.

- 8) DEM/USD 9000DPRI/IF ANY AT LOADING PORT TO BE SETTLED
BEFORE VSL ARRIVE DISCHARGE PORT,THE SAME AT DISCHARGE
PORT TO BE SETTLED W/ TWO(22) BANKING DAYS AFTER
COMPLETION OF DISCHARGE.
- 9) OWRS AGENT AT BENDS.
- 10) CHRTR GUARANTEE TO COMMENCE LOADING W/ 4 WWDs SHINC
UPON NOR TENDERED. IF NOT, CHRTR SHOULD PAY
DEMURRAGE TO OWNERS EVERY 4 DAYS IN ADVANCE.
- 11) SHORE CRANE AT DISCHARGE PORT TBF CHRTRS ACCT (OWRS
ONLY OFFER SHIPP DERRECKS WORKING ON LOADING PORT)
- 12) WHARFAGES/TAXES/DUES,IF ANY,ON CGO TBF CHRTRS
ACCT,SAME ON VSL/FRT TBF OWRS ACCT.
- 13) L/E/D IF ANY,TBF CHRTRS ACCT.
- 14) LIGHTERAGE/LIGHTERING IF ANY TBF CHRTRS ACCT
- 15) ARBITRATION:IN HONGKONG AND ENGLISH LAW TB APPLIED
- 16) OTHERS AS PER GENCON C/P 94

FOR & ON BEHALF OF OWNERS: FOR & ON BEHALF OF CHARTERER

OWR:BAO

CHRTR

TONG SHIPPING LIMITED

MODERN WOOD INVESTMENT LTD:



18th Aug. 2007

For and on behalf of
MODERN WOOD INVESTMENT LIMITED

[Signature]
Authorized Signature(s)

EXHIBIT 2

Page 1

CODE NAME: "CONG ENBILL" EDITION 1994

Shipper
**HUNG THINH EXPORT AGRICULTURAL FOREST
 PRODUCTS JOINT STOCK COMPANY**
 3TH HAMLET, SONH XOI COMMUNE, TAN THANH
 DISTRICT, BA RIA-VUNG TAU PROVINCE, VIETNAM
 TEL: 084-64-218487 FAX: 084-64-897188

Consignee

**TO ORDER OF SHANGHAI COMMERCIAL BANK LTD.
 HONG KONG**

Notify address

MODERN WOOD INVESTMENT LIMITED
 13/F RICHMAKE COMMERCIAL BUILDING
 193-200 QUEEN'S ROAD C. HONG KONG

Vessel

MY CHUN JIANG

Port of loading

**AT PHU MY STEEL PORT, BA RIA-VUNG TAU
 PROVINCE, VIETNAM**

Port of discharge

YANGPU PORT, HAINAN, P.R. CHINA**BILL OF LADING** B/L No.: 08HT-BL

TO BE USED WITH CHARTER-PARTIES

Reference No.:

CARRIER NAME: SAOTONG SHIPPING LIMITED

Shipper's description of goods

ACACIA WOODCHIPS FOR PULPING USE
AT USD 95.50 PER DMT
VIETNAM ORIGIN FOB VIETNAM PORT
REMARKS: CARGO INCLUDE WATER
N/R FOR QUANTITY SHORTAGE
D/C NO. LCAA89778

Gross weight

6,011.82 MTS

DAI LOC MARITIME SHIPPING AGENCY HCMC

ON M/V CHUN JIANG**SHIPPED ON BOARD: AUGUST 26, 2007****AT PHU MY STEEL PORT, BA RIA-VUNG TAU PROVINCE, VIETNAM****THE VESSEL'S AGENT: DAI LOC MARITIME SHIPPING AGENCY HCMC**

(at which on dock at Shipper's risk, the Carrier not
 being responsible for loss or damage howsoever arising)

Freight payable as per

CHARTER-PARTY dated: 12TH AUG. 2007**"FREIGHT COLLECT"**

FREIGHT PREPAID

Received on account of freight

Time used for loading days hours.

SHIPPED at the Port of Loading in apparent good order and
 condition on board the vessel for carriage to the Port of
 Discharge as per mate's receipt as the mate may get the goods
 specified above
 Weight, measure, quality, quantity, condition, contents and
 value unknown.
 IN WITNESS whereof the Master or Agent of the said Vessel has
 signed the number of Bills of Lading indicated below at or to the order
 and dated, any one of which being accomplished the others shall be
 void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Printed and sold by
 Messrs. J. & C. Messers, Limited, 22/28 Abchurch Lane
 G13 LONDON EC4A 3DF
 Tel No. 0171 251 8541 Fax No. 0171 251 1200
 By authority of The Customs and International Maritime Council
 (CIMO) Copenhagen

Place payable at	Place and date of issue
Number of original Bill	Signature DAI LOC MARITIME SHIPPING AGENCY HCMC
THREE (03)	DAI LOC MARITIME SHIPPING AGENCY HCMC
	AS AGENT FOR AND ON BEHALF OF M/V CHUN JIANG As Agent

DAI LOC SEP 01 2007

26/08 2007 10:06 FAX 84 8 851 0880

11-08-2007 06:27 From:

EXHIBIT 3

2007-09-06

发件人: btshipping
发送时间: 2007-09-06 10:26:36
收件人: modnwood
抄送: greatsources
主题: DEMURRAGE AND ESTIMATED UNREPAIRED DAMAGE FEES

DEAR SIR,

PLS KINDLY AFFIRM AND REMIT TTL USD59000(INCLUDING DEMURRAGE USD 45000 AND ESTIMATED UNREPAIRED DAMAGE FEES USD 14000)TO OUR NOMINATED BANK ACCT W/T TWO(02) BANKING DAYS AFTER COMPLETION OF DISCHARGE.

THE CALCULATION PLS SEE ATTACHMENT.

AND I ALSO HAVE FAX CALCULATION AND STATEMENT OF FACTS IN YANGPU PORT TO YOU,PLS CHECK IT.

-BENEFICIARY:

BAOTONG SHIPPING LIMITED

-BENE' S A/C NO: OSA2020313000074

-BENEFICIARY BANK: XIAMEN INTERNATIONAL BANK

-SWIFT CODE: IBXHCNBA

TKS/RGS

SINVIA

BAOTONG SHIPPING LIMITED

btshipping
2007-09-06

2007-11-7

TO:MODERN WOOD INVESTMENT LIMITED
 FM: BAOTONG SHIPPING LIMITED

LAYTIME CALCULATON SHEET AT PHU MY PORT

M.V CHUN JIANG

CGO: 6811.92MT WOOD SHIPS

NOR TENDERED: 1400LT, 20TH, AUG, 2007

LOADG COMMENCED: 1430LT, 22ND, AUG, 2007

LAYTIME COMMENCED TO COUNT: 0600LT, 21ST, AUG, 2007

LOADG COMPLETED: 1315LT, 26TH, AUG, 2007

LOADING /UNLOADING RATE: TTL 6 CALENDAR DAYS, SHEX.UU

AFTER CALULATION,THE LOADING RATE IS:

1 SHORE CRANE=1.4 SHIP CRANE

MEAL TIME:0500-0700;1100-1200;1800-1900;2300-2400

DAY:	DATE :	FROM	TO :	TIME USED :	REMARKS
MON:	20/08/07	1400LT	- 2400LT	00HRS	WAITING FOR BERTH
TUES:	21/08/07	0000LT	- 2400LT	18HRS	WAITG FOR BERTH
WED:	22/08/07	0000LT	- 2400LT	24HRS	WAITG FOR LOADG AND THEN LOADING
THU:	23/08/07	0000LT	- 2400LT	24HRS	LOADING
FRI:	24/08/07	0000LT	- 2400LT	24HRS	LOADING
SAT:	25/08/07	0000LT	- 2400LT	24HRS	LOADING
SUN:	26/08/07	0000LT	- 1315LT	24HRS	LOADING AND COMPLETED LOADING

TTL: 138HRS

REMARK: THE TIME LESS FOR VESSEL CRANE'S NOT IN GOOD ORDER ASF:

22/08/07: 1430LT-1600LT 1.5 / 4HRS (lack 1 ship crane)

1730LT-2400LT 4.5 / 4 HRS(lack 1 ship crane)

23/08/07: 0000LT-0200LT 2 / 4 HRS (lack 1 ship crane)

0200LT-0830LT 4.5 / 4 X 0.6 (lack 0.6 ship crane)

0830LT-2400LT 12.5 / 4 X 0.2 (lack 0.2 ship crane)

24/08/07: 0000LT-2400LT 19 / 4 X 0.2 (lack 0.2 ship crane)

25/08/07: 0000LT-2400LT 19 / 4 X 0.2 (lack 0.2 ship crane)

TTL: LESS 5.2 HRS

SO THE LAYTIME USED IN PHU MY PORT IS 132.8HRS(138HRS-5.2HRS)

DEM/DES CALCULATON SHEET AT YANGPU

M.V CHUN JIANG

CGO:6811.92MT ACACIA WOODCHIPS

ARRIVE TIME AT YANGPU: 0345LT, 31st, AUG, 2007, 2007

NOR TENDERED: 0345LT, 31st, AUG, 2007

UNLOADG COMMENCED: 2220LT, 31st, AUG, 2007

LAYTIME COMMENCED TO COUNT: 1300LT, 31st, AUG, 2007

UNLOADG COMPLETED: 1510LT 05TH, SEP, 2007

LOADING/UNLOADING RATE: TTL 6 CALENDAR DAYS, SHEX.UU

DAY: DATE :	FROM	- TO :	TIME USED :	REMARKS
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FRI: 31/08/07	: 0345LT	- 1300LT	09HRS	ARRIVAL AND WAITING FOR UNLOADING
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	1300LT	- 2400LT	11HRS	LAYTIME COMMENCE AND UNLOADING ✓
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SAT: 01/09/07	: 0000LT	- 2400LT	24HRS	DEMURRAGING
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SUN: 02/09/07	: 0000LT	- 2400LT	24HRS	DEMURRAGING
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MON: 03/09/07	: 0000LT	- 2400LT	24HRS	DEMURRAGING
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TUE: 04/09/07	: 0000LT	- 2400LT	24HRS	DEMURRAGING
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WED: 05/09/07	: 0000LT	- 1510LT	24HRS	DEMURRAGING
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TTL: 131HRS

(132.8HRS + 131HRS) = 263.8HRS = 11 DAYS

DEM/DES: USD9000.00/DPR/DHD

DEM: (11DAYS-6DAYS) x USD9000.00/DAY = USD45000.00

REMARK:

- 1) PLS KINDLY CLEAR THAT THE RULE OF CALENDAR DAYS IS THAT A PART OF A DAY WAS TO BE TREATED AS A DAY.

FOR THIS REASON THE USED TIME OF 26/08/07 AND 05/08/07 WERE TREAT AS TWO DAYS.

- 2) THE RULE OF DEMURRAGE IS "ONCE ON DEMURRAGE ALWAYS ON DEMURRAGE"

SO ONCE ON DEMURRAGE, ALL THE TIME WILL BE IN DEMURRAGE, CANN'T LESS ANY TIME LOSS BY ANY REASON.

EXHIBIT 4

WANG JING & CO. Law Firm

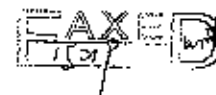
Shanghai Office

Partners: Wang Jing (Non-resident)
Zhong Cheng
Wang Hongyu
Consultants: Lei Hai (Master Mariner)
Janet Ching (Solicitor England & Wales)
Associates: Chen Xin Wang Canming
Duan Xiao Xu Jianfeng
Fei Jun Xu Jun
Tan Jie Fan Subai

Rm. 1909-11, 19/F.
China Merchants Tower
161 Lu Jia Zui Dong Road, Pudong
Shanghai 200120, P. R. China
E-mail: shanghai@wjnc.com
Website: www.wjnc.com
Tel: (86-21) 5887 8000
Fax: (86-21) 5882 2460
(86-21) 5887 4150

FAX TRANSMISSION

To : Philip Yang Esq
Fax No : 00 852 2545 6079



From : Janet Ching
Fax : +86 5882 2460
Email : janetching@wjnc.com
Date : 30 November 2007

Page(s): 1

URGENT

Re: "CHUN JIANG" – Fixture Note dated 18 August 2007

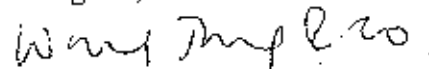
We should be grateful if you would accept appointment as arbitrator on behalf of our clients, Baotong Shipping Ltd who are the Owners of the above named vessel under the Fixture Note dated 18 August 2007 incorporating Gencon 1994 terms. The appointment is in relation to a demurrage dispute arising under a Fixture Note.

The Charterers are Modern Wood Investment Limited of 13/F Richmake Comm. Building, 198-200 Queen's Road, Central, Hong Kong.

Clause 15 of the Fixture Note provides "ARBITRATION: IN HONG KONG AND ENGLISH LAW TO BE APPLIED". Please let us know if you would like a copy of the Fixture Note at this stage.

We look forward to receiving your confirmation as soon as possible.

Kind regards,


Janet Ching

WANG JING & CO, SHANGHAI

GZ Head Office	Tianjin	Qingdao	Xiamen	Fuzhou	Haikou
Tel: 20-87600082	Tel: 22-25323818	Tel: 532-86665858	Tel: 592-2681379	Tel: 591-87812260	Tel: 898-66722583
Fax: 20-87784482	Fax: 22-25323820	Fax: 532-86665868	Fax: 592-2681380	Fax: 591-87812210	Fax: 898-66720770

FROM : 0200

PHONE NO. :

Nov. 30 2007 04:07PM P1

PHILIP YANG 杨良宜

FCI Arb. ACII FICS Master Mariner

PHILIP YANG & CO., LTD.

TO : Wang Jing & Co. Law Firm

FACSIMILE TRANSMISSION

ATTN : Ms. Janet Ching

FACSIMILE: (852) 2545 6079

DATE : 30 November 2007

TOTAL: 1 PAGE(S)

RE : M.V. "CHUN JIANG" - F/N TELEPHONE: (852) 2544 1909

dd.18.08.2007

Dear Sirs,

Thank you for your fax a while ago appointing me as your client Owners' arbitrator. I confirm that it is my pleasure to accept the appointment.

I have no particular terms of appointment, except I reserve my right to call for deposit of my fees. My current hourly rate is at HK\$ 4,500-5,000. On top, I charge an appointment fee of HK\$2,500. Please accept this fax as the invoice of my appointment fee and remit (net of bank charges) to the following bank account:

Hang Seng Bank Ltd.,
Sheung Wan Branch,
G/F & M/F, Shum Tower,
264-270, Des Voeux Road, Central,
Sheung Wan,
Hong Kong.
A/C Name: Philip Yang & Co. Ltd.,
A/C No. 239-039878-001

I look forward to hearing further from you in this reference. There is no need to send me the Fixture Note at this juncture as I have been told of the arbitration agreement. It can be sent to me together with other documents.

Best regards,


Philip Yang